

business as a government securities broker or dealer.

(d) *Recommendations to customers.* In recommending to a customer the purchase, sale or exchange of a government security, a bank that is a government securities broker or dealer shall have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to the customer's other security holdings and as to the customer's financial situation and needs.

(e) *Customer information.* Prior to the execution of a transaction recommended to a non-institutional customer, a bank that is a government securities broker or dealer shall make reasonable efforts to obtain information concerning:

- (1) The customer's financial status;
- (2) The customer's tax status;
- (3) The customer's investment objectives; and
- (4) Such other information used or considered to be reasonable by the bank in making recommendations to the customer.

### Subpart D—Prompt Corrective Action

SOURCE: 63 FR 37652, July 13, 1998, unless otherwise noted.

#### § 208.40 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.

(a) *Authority.* Subpart D of Regulation H (12 CFR part 208, Subpart D) is issued by the Board of Governors of the Federal Reserve System (Board) under section 38 (section 38) of the FDI Act as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236 (1991)) (12 U.S.C. 1831o).

(b) *Purpose and scope.* This subpart D defines the capital measures and capital levels that are used for determining the supervisory actions authorized under section 38 of the FDI Act. (Section 38 of the FDI Act establishes a framework of supervisory actions for insured depository institutions that are not adequately capitalized.) This subpart also establishes procedures for submission and review of capital res-

toration plans and for issuance and review of directives and orders pursuant to section 38. Certain of the provisions of this subpart apply to officers, directors, and employees of state member banks. Other provisions apply to any company that controls a member bank and to the affiliates of the member bank.

(c) *Other supervisory authority.* Neither section 38 nor this subpart in any way limits the authority of the Board under any other provision of law to take supervisory actions to address unsafe or unsound practices or conditions, deficient capital levels, violations of law, or other practices. Action under section 38 of the FDI Act and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the Board, including issuance of cease and desist orders, capital directives, approval or denial of applications or notices, assessment of civil money penalties, or any other actions authorized by law.

(d) *Disclosure of capital categories.* The assignment of a bank under this subpart within a particular capital category is for purposes of implementing and applying the provisions of section 38. Unless permitted by the Board or otherwise required by law, no bank may state in any advertisement or promotional material its capital category under this subpart or that the Board or any other Federal banking agency has assigned the bank to a particular capital category.

#### § 208.41 Definitions for purposes of this subpart.

For purposes of this subpart, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in section 38 and section 3 of the FDI Act.

(a) *Control*—(1) *Control* has the same meaning assigned to it in section 2 of the Bank Holding Company Act (12 U.S.C. 1841), and the term *controlled* shall be construed consistently with the term *control*.

(2) *Exclusion for fiduciary ownership.* No insured depository institution or